

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
(Talladega and Munford, Alabama)

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MB Docket No. 04-19
RM - 10845

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JUL 14 2005

Federal Communications Commission
Office of Secretary

To: Office of the Secretary
Attn: Assistant Chief, Audio Division
Media Bureau

**OPPOSITION TO "REQUEST FOR LEAVE
AND REPLY COMMENTS"**

Jacobs Broadcast Group, Inc. ("Jacobs"), licensee of Station WTDR(FM), Talladega, Alabama (the "Station"), by its counsel, hereby opposes the "*Request for Leave and Reply Comments*" (the "*Reply Comments*") filed on July 1, 2005, by Calhoun Communications ("Calhoun") in the above captioned proceeding. As the Media Bureau's "*Request for Supplemental Information*"¹ stated, comments were due by June 20, 2005, and Calhoun filed *Comments* on that date. However, Calhoun now attempts to supply the Bureau with additional *Tuck* information. The only conclusion that Jacobs can reach is that Calhoun wants to continue to prolong this proceeding and burden the record with extraneous information. This is consistent with Calhoun's position throughout this proceeding, which has been to delay for competitive and not public interest reasons. Thus, the Bureau should dismiss Calhoun's *Reply Comments* without

¹ See DA 05-1149.

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consideration. Nevertheless, if the Bureau grants leave and accepts Calhoun's Reply Comments, Jacobs hereby provides a response.²

I. THE ONLY ISSUE IN THIS PROCEEDING IS WHETHER MUNFORD, ALABAMA IS SUFFICIENTLY INDEPENDENT OF ANNISTON, ALABAMA. JACOBS' INTENT IS IRRELEVANT.

1. As stated throughout this proceeding, the reallocation proposed by Jacobs, under current Commission precedent, does not require a *Tuck* showing because (i) Munford is not located in the Anniston Urbanized Area, and (ii) the proposed 70 dBu contour of Station WTDR(FM) will not cover more than 50% of the Anniston Urbanized Area.³ This is established Commission policy, which Calhoun does not dispute. Instead, Calhoun repeatedly focuses on the fact that the Station has the potential to serve a large portion of Anniston and claims that Jacobs intends to serve Anniston. However, the complaints raised by Calhoun about the Station's potential and Jacobs' intention to serve Anniston are irrelevant in this proceeding and are nothing more than a distraction. The Commission long ago determined that it would not look at the intent of parties because the focus must be the needs of the community at issue for a first local service. *See Suburban Community Policy, the Berwick Doctrine, and the De Facto Reallocation Policy*, 93 FCC 2d 436, ¶¶ 1, 20 (1983). If a proposal is technically acceptable, the Commission's main concern is to ensure that the proposed community is sufficiently independent of the urbanized area, which Jacobs has amply demonstrated in this proceeding.

2. Nevertheless, as a result of Calhoun's claims, the Bureau requested a *Tuck* showing to ensure that the community of Munford was sufficiently independent of Anniston to warrant a first local service preference. As demonstrated in Jacobs' June 20, 2005 *Supplement*,

² This pleading summarizes the evidence that was submitted in *Comments* filed on June 20, 2005, with the exception of declarations provided by Munford Town Council members.

³ *See, e.g., Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) ("*Tuck*"); *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352, ¶ 11 (1995).

and as reiterated below, Jacobs has submitted ample evidence to demonstrate Munford's independence. Thus, Munford is deserving of a first local service and to deny Munford this first local service would be contrary to the public interest.⁴

II. UNDER *TUCK*, THE COMMUNITY OF MUNFORD IS INDEPENDENT OF ANNISTON.

3. Jacobs' pleadings in this proceeding present conclusive evidence that the community of Munford satisfies the *Tuck* requirements and is therefore independent of Anniston. Calhoun in its pleadings has consistently tried to distract the Bureau by arguing, in essence, that because Munford is a newly incorporated community it must be dependent on Anniston. This argument lacks merit and does not dispute the ample evidence in this proceeding. Further, Calhoun does not submit any evidence to demonstrate that Munford is dependent on Anniston or even on Calhoun County, the county where Anniston is located. At most, Calhoun demonstrates that Munford relies on Talladega County, the county where it is located, for some of its services. However, it is not uncommon for a small community to rely on its county for services and this does not preclude a finding of independence.⁵ What is significant, however, is that Munford does not rely on Anniston for services.

4. What is also significant about Calhoun's pleadings is that they acknowledge that Munford has the following factors that demonstrate independence: (i) Munford is home to a number of retail and industrial businesses,⁶ (ii) Munford has a municipal government,⁷ (iii)

⁴ See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1988).

⁵ See *Chillicothe and Ashville, Ohio*, 17 FCC Rcd 20418, ¶ 18 (2002), *app. for review pending* (the Bureau found relevant the fact that the community of Ashville relied on the county and not on the larger community of Columbus for fire and school services); *Bon Air, Virginia, et al.*, 11 FCC Rcd 5758, ¶ 11 (1996) (the Bureau found relevant the fact that the community of Fort Lee relied on the county and not on the larger community of Petersburg for school services).

⁶ *Comments* at p. 4, 6.

⁷ *Comments* at p. 5.

Munford has a volunteer fire department,⁸ (iv) Munford has its own zip code and post office,⁹ and (v) Munford has health care facilities.¹⁰ This evidence by itself demonstrates that Munford is independent of Anniston. Further, Calhoun fails to acknowledge the additional evidence submitted by Jacobs demonstrating that Munford is independent of Anniston, including the fact that the residents and government officials perceive Munford as an independent community. Rather, Calhoun is careful in its pleadings to rebut only certain factual showings. However, Calhoun's assertions distort the facts and are not in accordance with the evidence in this proceeding and the large body of case law in this area. Specifically:

(1) *A Substantial Percentage of Munford Residents Work in Munford, and Munford Offers Substantial Employment Opportunities for its Residents.* In its Supplement, Jacobs submitted evidence from the 2000 U.S. Census that 14.6% of the working age residents of Munford work in Munford. Instead of rebutting this evidence, Calhoun tries to penalize Munford for incorporating in 2002. Specifically, Calhoun claims that because Munford incorporated in 2002 the Census data for the Munford CDP can no longer be relied upon. This is a baseless proposition because the Commission has consistently relied on 2000 Census data as relevant in determining independence under this criteria.¹¹ Calhoun submits no evidence to conclude otherwise or to conclude that since the year 2000 these residents no longer work in Munford. Finally, as previously submitted by Jacobs, there are a number of businesses in Munford that provide ample opportunities for the residents of Munford to work in Munford. *See, e.g., Seymour and Sellersburg, Indiana*, 19 FCC Rcd 15312, ¶ 7 (2004); *Lebanon and Speedway, Indiana*, 17 FCC Rcd 25064, ¶ 4 (2002) (the presence of many employers in the community

⁸ *Comments* at p. 5.

⁹ *Comments* at p. 6.

¹⁰ *Reply Comments* at p. 7.

¹¹ *See Sparta and Buckhead, Georgia*, 15 FCC Rcd 21536, n. 4 (2000).

alleviates any concern that the community is dependent on the urbanized area for employment of its residents); *Clovis and Madera, California*, 11 FCC Rcd 5219, ¶ 19 (1996) (given the large number of businesses attributed to the community it is plausible that the community is capable of providing ample employment opportunities to its residents).

(2) *Munford is Served by a Newspaper that Covers its Local Needs and Interests and is Separate from Anniston.* Calhoun asserts that because *The Daily Home* is not strictly a Munford paper, it cannot cover the local needs and interests of the community of Munford. The key point is that *The Daily Home* does indeed cover Munford's local needs and interests, is distributed in Munford, and is not an Anniston paper.¹² Further, there is no basis for Calhoun's implicit assertion that a paper needs to be published in a community in order to serve that community. The fact that Calhoun offers no support for this argument is telling. See *Seymour and Sellersburg, Indiana*, 19 FCC Rcd 15312, ¶ 7 (2004); *Crisfield, Maryland, Belle Haven, Cape Charles, Exmore, Nassawadox, and Poquoson, Virginia*, 18 FCC Rcd 19561, ¶ 13 (2003); *Screven, Rincon, and Statesboro, Georgia, and Palatka and Middleburg, Florida*, 17 FCC Rcd 20485, ¶ 5 (2002); *Elizabeth City, North Carolina, and Chesapeake, Virginia*, 9 FCC Rcd 3586, ¶ 20 (1994) (in each of these cases the Commission found that a local newspaper adequately covers the communities' local needs and interests even though the paper was not published in the community at issue).

(3) *Community Leaders and Residents Perceive Munford as Independent of Anniston.* In its *Supplement* Jacobs submitted a letter from the Mayor of Munford and surveys from citizens to demonstrate that community leaders and residents perceive Munford as independent. Further, it is clear from Munford's recent incorporation and formation of a local government that

¹² This was demonstrated by the articles submitted in Jacobs *Supplement*. In addition, legal notices for the community of Munford are required to be placed in *The Daily Home*, which is further evidence that the paper covers the local needs and interests of Munford.

Munford is perceived as a separate community. None of this evidence was disputed by Calhoun. To further support this claim, attached hereto as Exhibit 1 are the declarations of four of the five Munford town council members stating that they believe that Munford is independent and separate from Anniston.¹³ Moreover, such evidence is consistent with other cases where the Bureau found independence. *See, e.g., Pleasanton, Bandera, Hondo, and Schertz, Texas*, 15 FCC Rcd 3068, ¶ 9 (2000) (letter from city official sufficient to demonstrate independence); *Cadiz and Oak Grove, Kentucky*, 10 FCC Rcd 10785, ¶ 14 (1995) (letter from mayor and county judge executive sufficient to demonstrate independence); *D'Iberville and Wiggins, Mississippi*, 10 FCC Rcd 10796, ¶ 5 (1995) (letter from mayor, and competitive athletics in the community, sufficient to demonstrate independence).

(4) *Munford's own Local Government is Independent of Anniston's.* It is not disputed that Munford has its own local government, with a Mayor and five member Town Council.¹⁴ Munford also has a Town Manager and Town Treasurer, is in the process of creating new departments to serve the residents of Munford, and has implemented a local tobacco tax. This again is consistent with Bureau precedent. *See, e.g., Jupiter and Hobe Sound, Florida*, 12 FCC Rcd 3570, ¶ 6 (1997) (crediting the community of Hobe Sound with independence even though its "local" government was one member on a county Board of Commissioners); *Hallie and Ladysmith, Wisconsin*, 10 FCC Rcd 9257, ¶ 6 (1995) (finding Hallie, Wisconsin, with a five person Board of Supervisors and a full time secretarial staff, to be independent). Further, Commission precedent suggests that local government has traditionally been the most important

¹³ The fifth council member was on vacation and unavailable to execute a declaration.

¹⁴ Calhoun makes an attempt to discount Munford's government by citing to the Bureau's decision in *Pleasant Dale, Nebraska*, 14 FCC Rcd 18893 (1999). However, in this case the Bureau was determining whether a Pleasant Dale was a community for allotment purposes and not whether it was dependent on another community as is the issue here. Munford's status as a community is not the issue in this proceeding.

Tuck factor and only where a community lacks any form of local government will the Commission fail to find independence. See e.g. *Detroit Lakes and Barnesville, Minnesota, and Enderlin, North Dakota*, 17 FCC Rcd 25055, ¶ 11 (2002); *Pleasanton, Bandera, Hondo, and Schertz, Texas*, 15 FCC Rcd 3068, ¶ 9 (2000).

(5) *Munford has its own Zip Code and Post Office Independent of Anniston. Munford also has Separate Listings in a Phone Book that does not Include Anniston or Communities in Calhoun County.* It is not disputed that Munford has its own zip code and post office. This by itself demonstrates independence under this factor. See, e.g., *Elizabeth City, North Carolina, and Chesapeake, Virginia*, 9 FCC Rcd 3586, ¶ 20 (1994) (the existence of a zip code weighed against a finding of dependence). However, Munford also has a separate section in the Greater Talladega County Telephone Directory. A copy of selected pages of this Section is attached hereto as Exhibit 2. Calhoun focuses on the fact that this phone book is not Munford's own phone book. While technically true, this is again irrelevant. What is relevant is that Munford has its own separate section in a phone book that is completely independent of Anniston and Calhoun County. See *Seymour and Sellersburg, Indiana*, 19 FCC Rcd 15312, ¶ 8 (2004).

(6) *Munford has its own Commercial Establishments, Health Facilities, and Community Organizations Independent of Anniston.* Munford is home to a number of businesses and commercial establishments. As stated in Jacobs' *Supplement*, a number of local businesses identify with the community by using "Munford" in their name, including Munford Headstart, Munford Heating & Cooling, Munford Machine, Inc., Munford Mini-Storage, and Munford Village Apartments. Other local businesses include Pickette's Supermarket, Big Daddy BBQ, Eastern Bail Bonds, First National Bank – Munford Branch, Evelyn's Bakery, and Carter's Hardware and Auto Parts. Calhoun does not dispute this either.

Munford also has a number of health facilities that provide health care to the residents of Munford. While Calhoun admits that Munford has health facilities, it disputes the number and argues that because Munford does not have a hospital it cannot be independent. Again, this is nothing more than a distraction from the relevant facts of this proceeding. Munford has a significant number of health facilities for its size, and while Munford does not have a large hospital, it does not rely on Anniston for a hospital. Rather, the residents of Munford use the Baptist Hospital in Talladega, which has an office in Munford. Calhoun also alleges that Munford lacks specific types of community organizations (e.g. Kiwanis Club and Rotary Club), but ignores the community organizations that Munford does have. Specifically, Munford has a youth little league organization, a Jaycees, and a number of religious organizations.

Calhoun's arguments regarding this criteria do little to counter the overwhelming evidence of independence, which is consistent with Bureau precedent. *Farmersville, Texas, et al.*, 12 FCC Rcd 4099, ¶ 6 (1997) (the Commission found Flower Mound to be independent as it possessed some local businesses, a library, twelve churches, a golf course, and parks); *Bon Air, Chester, Mechanicsville, Ruckersville, Williamsburg, and Fort Lee, Virginia*, 11 FCC Rcd 5758, ¶ 11 (1996) (the Commission found Fort Lee to be independent as it possessed a medical clinic, a dental clinic, and a few local businesses).

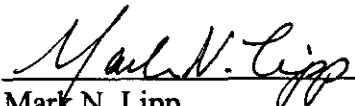
(7) *Munford's Advertising Market is Independent of Anniston.* *The Daily Home* provides ample opportunities for the businesses of Munford to advertise to the residents of Munford without having to rely on Anniston media. As stated above, Calhoun's argument that *The Daily Home* is not published in Munford is irrelevant because the paper covers Munford's local needs and interests, is distributed in Munford, and is not an Anniston paper.

(8) *Munford has its own fire protection, and its police protection and schools are independent of Anniston.* It is not disputed that Munford has its own volunteer fire department and water department, and is in the process of creating additional municipal departments. For example, Munford just implemented a Senior Citizen's program and employs a Public Safety Officer. It is also not disputed that Talladega County operates three schools in Munford (Munford Elementary School, Munford Middle School, and Munford High School) and provides police services to Munford. Calhoun, however, argues that these do not demonstrate independence because some of these services are provided by Talladega County. However, as discussed above, Calhoun misses or ignores the purpose of *Tuck*. The key point is that none of these services are provided by Anniston or even by the county where Anniston is located (Calhoun). Further, it is not uncommon for a small community to rely on a county for municipal services, and the evidence in this proceeding is consistent with Commission precedent. See *D'Iberville and Wiggins, Mississippi*, 10 FCC Rcd 10796, ¶ 5 (1995) (community had schools, library, volunteer fire department, and police services provided by the county).

5. This is not a close case. Based on *Tuck*, Munford is independent of Anniston. Nothing in Calhoun's pleadings demonstrate otherwise. Therefore, Jacobs respectfully requests that the Commission expedite the issuance of a *Report and Order* reallocating Channel 224A from Talladega to Munford, Alabama as that community's first local service. Jacobs reiterates that it will file an application for Channel 224A at Munford and construct the facilities as authorized.

Respectfully submitted,

JACOBS BROADCAST GROUP, INC.

By: 
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Its Counsel

July 14, 2005

EXHIBIT 1

I, Shane Turner declare as follows:

1. I am an elected member of the Munford, Alabama Town Council.
2. I believe that Munford is an independent community that does not rely on Anniston, Alabama or Calhoun County, Alabama.
3. Munford was incorporated on August 20th, 2002.
4. Munford has a mayor, a five-member town council, fire department, water department, town clerk and treasurer. In addition there are three schools in Munford; Munford Elementary School, Munford Middle School, and Munford High School, Munford also has a Public Safety Officer. Munford has just implemented a Senior Citizens' Program, which includes the development of a new Senior Citizen's Center.
5. As a new City, Munford is in the planning stages of creating several departments to provide the residents of Munford services such as long range planning, zoning, permitting, code enforcement, public works, parks & recreation, road maintenance, and sanitation.
6. Munford recently implemented a local tobacco tax.

By: Shane Turner

Date: July 12, 2005

1. D. Lynn Swinford declare as follows:

1. I am an elected member of the Munford, Alabama Town Council.
2. I believe that Munford is an independent community that does not rely on Anniston, Alabama or Calhoun County, Alabama.
3. Munford was incorporated on August 20th, 2002.
4. Munford has a mayor, a five-member town council, fire department, water department, town clerk and treasurer. In addition there are three schools in Munford; Munford Elementary School, Munford Middle School, and Munford High School. Munford also has a Public Safety Officer. Munford has just implemented a Senior Citizens' Program, which includes the development of a new Senior Citizen's Center.
5. As a new City, Munford is in the planning stages of creating several departments to provide the residents of Munford services such as long range planning, zoning, permitting, code enforcement, public works, parks & recreation, road maintenance, and sanitation.
6. Munford recently implemented a local tobacco tax.

By: _____

Date: July 12, 2005

1. Wade E. Champion declare as follows:

1. I am an elected member of the Munford, Alabama Town Council.
2. I believe that Munford is an independent community that does not rely on Anniston, Alabama or Calhoun County, Alabama.
3. Munford was incorporated on August 20th, 2002.
4. Munford has a mayor, a five-member town council, fire department, water department, town clerk and treasurer. In addition there are three schools in Munford; Munford Elementary School, Munford Middle School, and Munford High School, Munford also has a Public Safety Officer. Munford has just implemented a Senior Citizens' Program, which includes the development of a new Senior Citizen's Center.
5. As a new City, Munford is in the planning stages of creating several departments to provide the residents of Munford services such as long range planning, zoning, permitting, code enforcement, public works, parks & recreation, road maintenance, and sanitation.
6. Munford recently implemented a local tobacco tax.

By: Wade E. Champion Councilman #5

Date: July 12, 2005

1, Jimmy Nelson declare as follows:

1. I am an elected member of the Munford, Alabama Town Council.
2. I believe that Munford is an independent community that does not rely on Anniston, Alabama or Calhoun County, Alabama.
3. Munford was incorporated on August 20th, 2002.
4. Munford has a mayor, a five-member town council, fire department, water department, town clerk and treasurer. In addition there are three schools in Munford; Munford Elementary School, Munford Middle School, and Munford High School, Munford also has a Public Safety Officer. Munford has just implemented a Senior Citizens' Program, which includes the development of a new Senior Citizen's Center.
5. As a new City, Munford is in the planning stages of creating several departments to provide the residents of Munford services such as long range planning, zoning, permitting, code enforcement, public works, parks & recreation, road maintenance, and sanitation.
6. ~~Munford recently implemented a local tobacco tax.~~

By: J. Nelson

Date: July 12, 2005

Lee Dawson declare as follows:

1. I am an elected member of the Munford, Alabama Town Council.
2. I believe that Munford is an Independent community that does not rely on Anniston, Alabama or Calhoun County, Alabama.
3. Munford was incorporated on August 20th, 2002.
4. Munford has a mayor, a five-member town council, fire department, water department, town clerk and treasurer. In addition there are three schools in Munford; Munford Elementary School, Munford Middle School, and Munford High School, Munford also has a Public Safety Officer. Munford has just implemented a Senior Citizens' Program, which includes the development of a new Senior Citizen's Center.
5. As a new City, Munford is in the planning stages of creating several departments to provide the residents of Munford services such as long range planning, zoning, permitting, code enforcement, public works, parks & recreation, road maintenance, and sanitation.
6. Munford recently implemented a local tobacco tax.

By: Lee Dawson

Date: July 12, 2005

EXHIBIT 2

 **BELLSOUTH**

*The Bell
Yellow Pages*



Yellow Pages


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CERTIFICATE OF SERVICE

I, Giselle Abreu, hereby certify that on this 14th day of July, 2005, a copy of the foregoing "**Opposition**" was sent via first-class mail, postage prepaid, to the following:

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Giselle Abreu

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